

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 222 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT and
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

1 & 2 Yes

3 to 5 No

COMMISSIONER OF INCOME-TAX

Versus

SABARKANTHA DISTRICT CO-OP. MILK PRODUCERS UNION LTD.

Appearance:

MR BB NAIK with MR MANISH R BHATT for Petitioner
SERVED BY RPAD - (N) for Respondent No. 1

CORAM : MR.JUSTICE J.N.BHATT and

MR.JUSTICE A.R.DAVE

Date of decision: 10/02/99

ORAL JUDGEMENT (per J.N. Bhatt, J.)

By this reference application u/s 256(1), at the instance of the Revenue, the following question is referred for our opinion, by the Income Tax Appellate Tribunal, arising out of its order dated 15.12.83, being

a question of law, in relation to the provisions of sec. 80P of the Income-tax Act, 1961, pertaining to the Assessment Years 1976-77 and 1977-78, of the respondent assessee.

"Whether unabsorbed depreciation under section 32(2) and unabsorbed development rebate under section 32(2)(iii) is not deductible before allowing deduction under section 80P of the Income-tax Act, 1961?"

2. The assessee is a co-operative society which claimed the benefit of provisions of sec. 80P in the income tax return for the aforesaid assessment years. However, on account of unabsorbed depreciation and development rebate of the past, the ITO declined. Upon an appeal, the CIT (Appeals) found and held that deduction u/s 80P of the I.T. Act was not fully allowable to the assessee in view of the provisions of sec. 80B(5) and sec. 80A(2) of the I.T. Act and also placing reliance on the decision of the Hon'ble Apex Court in Cambay Electric Supply Industrial Co. Ltd. v. CIT, 113 ITR 84. That is how the matter reached the Tribunal where the assessee succeeded and the Tribunal, relying upon the decision of the Madras High Court in case of CIT v. Katpadi Co-operative Timber Works Ltd., 135 ITR 287, dismissed the appeal. Hence, this reference.

3. We have heard the Learned Counsel appearing for the Revenue, whereas, none appeared for and on behalf of the respondent-assessee, though duly served.

4. The Learned Counsel for the Revenue, in course of his submission, pointed out the decision of the Hon'ble Apex Court in Kotagiri Industrial Co-operative Tea Factory Ltd., 225 ITR 604, and submitted that the assessee is not entitled to the benefit u/s 80P as claimed, in view of the provisions of sec. 80B(5).

5. Section 80P deals with and prescribes deduction in respect of income of co-operative societies whereas sec. 80B(5), as it then stood, defines the gross total income. Gross total income is defined as "the total income computed in accordance with the provisions of this Act, before making any deduction under this Chapter." So, the gross total income as defined is examined and appreciated threadbare in the decision in Kotagiri Industrial Co-operative Tea Factory's case (supra).

6. The assessee is a co-operative society and maintains books of account as per the financial year, following mercantile system of accounting. It had claimed benefit of sec. 80P of the I.T. Act but because of the past unabsorbed depreciation and development rebate for the A.Y. 1976-77, the concerned ITO computed the income as nil and denied deduction for A.Y. 1976-77 and 1977-78. Upon an appeal at the instance of the assessee, deduction u/s 80P was not fully allowed to the assessee, in view of the provisions of sec. 80B(5) and also sec. 80A(2) and relying on the decision of the Hon'ble Apex Court in Cambay Electric Supply Industrial Co. Ltd. (supra).

7. At the time of hearing, reliance was placed on the decision in the case of Kotagiri Industrial Co-operative Tea Factory (supra) where similar issue had been decided in favour of the assessee on identical facts.

8. The decision reported in Katpadi Co-operative Timber Works Ltd. (supra) had placed reliance on the decision of the Hon'ble Supreme Court in Cloth Traders (P.) Ltd. v. Addl. CIT, 118 ITR 243, while interpreting the provisions of sec. 80P of the Act. However, our attention is drawn by the Learned Counsel for the Revenue that the said decision of the Apex Court in Cloth Traders (P.) Ltd. (supra) has been reversed in Distributors (Baroda) Pvt. Ltd. v. Union of India, 155 ITR 120 which has been followed in Kotagiri Industrial Co-operative Tea Factory (supra).

9. In view of the latest decision of the Hon'ble Supreme Court, following the earlier decision which is reversed, whereby decision in Cloth Traders (supra) came to be reversed, which was relied on by the Madras High Court and the ITO, and considering the facts of the case and the aforesaid proposition of law, we answer the question raised for our opinion in negative, against the assessee and in favour of the Revenue.

Accordingly, this reference shall stand disposed of without any order of costs.

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